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1	UNITED STATES DISTRICT COURT			
2	EASTERN DISTRICT OF NEW YORK			
3		x :		
4	JOSE BAUTA,	: 14-CV-3725 (RER)		
5	Plaintiff,	United States CourthouseBrooklyn, New York		
	-against-	:		
6	GREYHOUND LINES INC., SABI			
7	ANDERSON, AKOS GUBICA, KAI GUBICA, and CAV ENTERPRISE			
8	Defendants.	: :		
9		: x		
10				
11	TRANSCRIPT OF CIVIL CAUSE FOR TRIAL BEFORE THE HONORABLE RAMON E. REYES			
12		ATES MAGISTRATE JUDGE		
13	1,555,540,0			
14	APPEARANCES			
15	For the Plaintiff: MG	· · · · · · · · · · · · · · · · · · ·		
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24		Cleveland, Ohio 44114		
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1	APPEARANCES (Continued)	:		
2				
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10				
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17	Proceedings recorded by mechanical stenography. Transcript			
18	produced by computer-aid	ded transcription.		
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to raise an issue with you.

The way I see it, the jury's verdict on compensatory damages, there's about \$183,000 in future damages, which is below the threshold for the present value calculation and structuring that's required by New York law. C.P.L.R. 5041, I believe, is the section. So, I don't believe we need to have a hearing on that or even have submissions from the economists, although we will have to do a collateral source hearing.

Do you agree or disagree or what?

MR. BARMEN: Defense agrees with you, your Honor.

THE COURT: Okay. So, what I thought makes sense is to, once we get a verdict on the punitive damages, is to actually enter judgment promptly. And then that would set 28 days in place for motions for a new trial, give you 30 days for oppositions, and then from that date or somewhere in that period of time have submissions on the collateral source and have a collateral source hearing, unless you can agree to resolve the collateral source issue.

So, it's a lot shorter than what the Defendants had submitted previously as their schedule, but I don't see any reason to delay it. Part of my goal in having a shorter schedule is I want Ardis to be able to work with me on any decision and her clerkship isn't forever.

MR. MCELFISH: What was the last part?

1 THE COURT: Her clerkship is not forever. And she 2 has other things that she needs to do too. 3 MR. SHAUB: Jonathan Shaub for the Defendants. I think the one issue might be, though, if we're 4 5 doing posttrial motions and we're seeking a remittitur or an 6 additur on the verdict, if we enter a judgment and then your 7 Honor grants an additur or a remittitur, whatever that is, we 8 have a judgment that's starting time to run, and, so, what are 9 we going to do then if your Honor changes that judgment? It seems the best practice, to me, would be to have 10 11 the post trial motions decided so we know the final verdict 12 number and then we can go from there, enter a judgment. 13 THE COURT: I can enter an amend judgment if the 14 judgment changes. 15 MR. SHAUB: But then if it's added up plus \$500,000, 16 then we're going to have a 50(b) issue. 17 If your Honor were to grant an additur, which we 18 don't believe that the Court should, if the Court were to 19 grant an additur and it would go above the \$500,000 for 20 future, then we would have to do a 50(b) judgment at that 21 point. 22 THE COURT: So we do that. 23 MR. SHAUB: Wouldn't it be easier to do the post

trial motions first, get that number, and then just do one

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single judgment?

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THE COURT: An amended judgment is no big deal. 1 2 MR. SHAUB: But we would then have to do the 3 hearings on 50(b) if it goes above \$500,000, and it turns into 4 a much bigger process at that point. So, the amended 5 judgment, if it went above \$500,000, we'd have to agree on 6 discount rates for the future income streams and would have to 7 come back and do all of this. 8 THE COURT: Do all of what again? 9 MR. SHAUB: We'd have to come back and do the -- if 10 we couldn't agree to a discount rate, we'd have to have 11 another hearing on the issue of what the discount rate is, 12 we'd have to submit and propose 50(b) structure judgments. 13 THE COURT: We may never get there. 14 MR. SHAUB: Okay. 15 THE COURT: That might not be an issue. And if it 16 is an issue, we'll deal with it. 17 You want time to do a motion for a new trial, I get 18 that, but I don't want to wait that long. I don't want to 19 wait 120 days before I get a motion, which is what your 20 schedule was; 60 days to move, 60 days to respond. 21 MR. MCELFISH: Which we objected to. 22 MR. SHAUB: Could we agree on maybe 45 days to move, 23 30 days to respond? 24 It seems --25 THE COURT: I can't. Civil Rule 59 says 28 days.

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think about it. And the only thing it would be is an

additional week, maybe, or I'd extend the date to enter

24

judgment. So, you're still going to get 28 days from the date 1 2 of judgment to file your motions and 30 days to respond. 3 You guys have big firms. You can do it. 4 MR. SHAUB: Your Honor, it's more just an issue of 5 the 50(b) hearing. It doesn't seem to make sense if we have 6 to do a judgment that would look one way and then if we have 7 to do a 50(b) judgment we're all going to have to come back, 8 do hearings, do submissions. 9 THE COURT: I completely disagree. All it has to do 10 with is how soon you have to file your motions for a new 11 That's all it is. Because if we have to do a 50(b) trial. 12 hearing later, we can do it. We don't have to do it now. 13 may never have to do it. But you're going to have to file your motion for a 14 15 new trial and you're going to have to do that sooner rather 16 than later. MR. MCELFISH: So, we have 28 days for that. 17 18 The rule says you have 28 days from THE COURT: 19 entry of judgment, and the only question is whether I'm going 20 to delay entering judgment or not. 21 MR. MCELFISH: Right. 22 THE COURT: So, you should start working on your 23 motions now. 24 MR. MCELFISH: Oh, yeah.

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THE COURT: You should be --

MR. BARMEN: Jamie Diamond is hard at work. 1 2 MR. MCELFISH: She's in motion hell right now. 3 MR. MOROKNEK: Judge, one other issue, if we might. We gave counsel a copy of the subpoena that we 4 5 want -- we're hoping your Honor will sign. We want to get an 6 updated balance on the Medicaid lien, if any. I had my 7 paralegal find out who the entity was that was overseeing the Medicaid; HMS, something. 8 9 I just want to know, because counsel doesn't know 10 and he hasn't been able to tell us or articulate what that lien amount is from Medicaid, if any. So, I'm hoping we can 11 12 give you a subpoena, you can sign it, and we can serve it and 13 get the answer to that with relevant expedience. 14 THE COURT: I have no problem signing that, but is 15 it just one or is it two? 16 I thought it was Emblem Health, or is Emblem Health 17 a Medicaid intermediary? 18 MR. MOROKNEK: I think they are, Judge. 19 And when she called to find out what the deal was 20 and who you send stuff do, the entity, HMS New York Casualty 21 Program, in Irving, Texas, ironically, we've been in 22 communication with them. They have to open a case, and the

way they open a case is with documentation from us.

need, I hope, with this.

already sent them a letter, and they will give us what we

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THE COURT: So, they are going to tell you how much
 1
     of a lien Medicaid/Emblem Health is asserting?
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 3
               MR. MOROKNEK: Yes.
 4
               But this isn't something, by the way, you guys have
 5
     already done.
 6
               MR. MCELFISH: By the way, I wasn't able to
 7
     articulate it as of three seconds ago. I don't know what it
     is right now, but I told you I'd be happy to look into it.
 8
 9
               MR. MOROKNEK: Again, I'm just surprised that's not
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     something you know off the top of your head.
11
               MR. MCELFISH: I'm sorry you're surprised.
12
               THE COURT: How does this effect the collateral
13
     source hearing?
               MR. MOROKNEK: Simply put, if there is no lien,
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15
     there's no responsibility to repay; if there is a lien, it's
16
     an issue.
17
               MR. MCELFISH: It shouldn't effect --
18
                                  If there is no lien, there is no
               THE COURT:
                          Wait.
19
     responsibility to repay it, but there has already been a
20
     payment from them, Emblem Health, to Franklin Hospital of
21
     $193,000. I think that's fair to say because that's what the
22
     bill from Franklin shows.
23
               MR. MOROKNEK: Right.
24
               THE COURT: And that is a collateral source.
25
               MR. MOROKNEK: Right.
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THE COURT: So, Mr. Bauta was granted by this jury
 1
     for Franklin Hospital $193,000 in damages, but that amount was
 2
 3
     paid already.
 4
               MR. MOROKNEK: That's right.
 5
               THE COURT: So, if Medicaid/Emblem Health is not
 6
     asserting a lien, that's fine, we still have to deal with the
 7
     collateral source issue. So, the judgment could be reduced by
     the $193,000 collateral source payment.
 8
 9
               MR. MOROKNEK: Understood, Judge. I think we're
     just being extra careful to make sure there's nothing else out
10
11
     there.
12
               THE COURT: So, if Emblem is saying or Medicaid,
13
     whatever, is saying, We have a lien for $60,000. We've paid
     $193,000 already, but we're only asking for $60,000, then what
14
15
     happens?
16
               Does Mr. Bautaa only get $60,000 because he's going
17
     to then have to turn around and give that to Emblem Health --
18
               MR. MOROKNEK:
                              Maybe.
19
               THE COURT: -- and 133 was --
20
               MR. MOROKNEK: 193 minus the 60.
21
               THE COURT: -- forgiven.
22
               MR. MOROKNEK: Maybe. I'm not sure, Judge, but
23
     maybe.
24
               THE COURT: All right.
25
               So, you need me to sign that?
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objected, you sustained the objection. I then moved to

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strike, and there was no ruling on the move to strike. 1 2 I realized that when I was reading the transcript 3 earlier today. 4 THE COURT: What was the representation? 5 MR. BARMEN: Mr. McElfish stated: To try and 6 somehow convince you that Greyhound's management fatigue 7 programs aren't inadequate so they shouldn't be held to a punitive damages -- held to punitive damages and that's 8 9 already decided. I then objected, your Honor sustain the objection, 10 11 and I then moved to strike. And there was no ruling on the 12 move to strike. 13 I have it up. I can show it to you. 14 THE COURT: It's what page? 15 MR. BARMEN: 4289 of the transcript. 16 THE COURTROOM DEPUTY: What day? 17 MR. BARMEN: Yesterday. 18 It's the reference to the fatigue management program 19 not being inadequate having been already decided. THE COURT: I'll grant the motion to strike "and 20 21 that's already decided." 22 MR. BARMEN: Thank you, your Honor. 23 THE COURT: The longer I stay here, the more issues 24 you'll come up with, so I'm getting out of here.

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MR. MCELFISH: You should get out of here.

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1
               THE COURT: They have ten more minutes. Let's see
2
     if they come back with something. Probably not.
 3
               (Court in recess awaiting verdict of the jury.)
 4
               (In open court at 4:45 p.m.; jury not present.)
 5
               THE COURTROOM DEPUTY: The CSO has confirmed the
     jurors have all left for the day.
6
 7
               (Matter adjourned until Friday, June 1, 2018, at
8
9
     9 a.m.)
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